

BUNBURY TREEFARM PROJECT AGREEMENT ACT 1995

No. 51 of 1995

AN ACT to ratify, and authorize the implementation of, an agreement between the State and Nippon Paper Treefarm Australia Pty Ltd, Mitsui Plantation Development (Australia) Pty Ltd and MCA Afforestation Pty Ltd in relation to the establishment in the Bunbury region of the State of commercial hardwood plantations for the purpose of producing wood chips for export.

[Assented to 21 November 1995.]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Bunbury Treefarm Project Agreement Act 1995*.

Commencement

2. This Act comes into operation on the day on which it receives the Royal Assent.

Interpretation

3. In this Act, unless the contrary intention appears —

“**the Agreement**” means the Bunbury Treefarm Project Agreement, a copy of which is set out in Schedule 1, and includes the Agreement as varied from time to time in accordance with its provisions.

Agreement ratified and implementation authorized

4. (1) The Agreement is ratified.

(2) The implementation of the Agreement is authorized.

(3) Without limiting or otherwise affecting the application of the *Government Agreements Act 1979*, the Agreement operates and takes effect despite any other Act or law.

SCHEDULE 1

[Section 3]

BUNBURY TREEFARM PROJECT AGREEMENT

THIS AGREEMENT is made this 1st day of September 1995

B E T W E E N :

THE STATE OF WESTERN AUSTRALIA (in this Agreement called "the State")

AND

NIPPON PAPER TREEFARM AUSTRALIA PTY LTD (ACN 070 211 004), **MITSUI PLANTATION DEVELOPMENT (AUSTRALIA) PTY LTD** (ACN 070 210 990), and **MCA AFFORESTATION PTY LTD** (ACN 070 210 981), all of Level 24, Bourke Place, 600 Bourke Street, Melbourne, Victoria (in this Agreement collectively called "the Joint Venturers" in which expression will be included their respective successors and permitted assigns)

RECITALS

- A. The Joint Venturers are desirous of establishing in the Bunbury Region commercial hardwood plantations for the purpose of producing wood chips for export through the Project;
- B. To this end the Executive Director of the Department of Conservation and Land Management ("the Executive Director") a body corporate constituted by the Conservation and Land Management Act 1984 ("the CALM Act") acting as the Joint Venturers' agent pursuant to a Deed of Agency and Indemnity entered into by the Executive Director and the Joint Venturers ("the AI Deed") will or may —
 - (a) enter into timber sharefarming agreements under section 34B of the CALM Act in respect of land in the Bunbury Region;
 - (b) acting under sections 33(1)(f) and 34A(1)(d), (g) and (h) of the CALM Act, with the Minister's approval do all or any of the following —
 - (i) arrange for the Joint Venturers to purchase;
 - (ii) take on lease;
 - (iii) enter into licences to enter and use;

(iv) enter into option agreements —

(I) to enter into timber sharefarming agreements under section 34B of the CALM Act in respect of;

(II) to take on lease;

(III) to enter into licences to enter and use;

(v) arrange for the Joint Venturers to enter into options to purchase

land in the Bunbury Region,

to allow the Joint Venturers to establish the Project on that land;

- C. The State for the purposes of promoting development in the South West of Western Australia and of promoting Western Australian exports agrees to assist the Joint Venturers in respect of the Project upon and subject to the terms of this Agreement.

**OPERATIVE PART WHEREBY THE PARTIES AGREE AS
FOLLOWS —**

DEFINITIONS AND INTERPRETATION

1. (1) In this Agreement subject to the context —

“Bunbury Region” means the land which is within a 120 kilometre radius of the General Post Office, Bunbury, Western Australia, with a long term average rainfall greater than 600 millimetres per annum and of which the State granted an estate in fee simple absolute prior to 1975;

“Project” means the establishment and maintenance of large scale commercial hardwood plantations of up to 20,000 hectares in the aggregate in the Bunbury Region for the purpose of producing woodchips for export;

“Timber Sharefarming Agreements” means timber sharefarming agreements referred to in Recital B(a).

- (2) In this Agreement any covenant or agreement on the part of the Joint Venturers is a joint and several covenant or agreement as the case may be.

INTRODUCTION OF BILL

2. The State must introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act prior to 31 December 1995 or such later date as the parties may agree.

COMMENCEMENT AND OPERATION OF AGREEMENT

3. This Agreement other than clauses 1 and 2 and this clause 3 does not commence to operate until the Bill referred to in clause 2 has been passed by the Parliament of Western Australia and comes into operation as an Act.

JOINT VENTURERS' OPERATIONS

4. (1) The Project must not exceed 20,000 hectares in the aggregate of which not more than 7,000 hectares shall be within the Shires of Dardanup, Donnybrook/Balingup, Bridgetown/ Greenbushes, Boyup Brook (except those areas having rainfall less than 700mm per annum), Capel, Busselton, Nannup and Manjimup.
- (2) The Joint Venturers in their operations in Western Australia must comply with and observe the laws for the time being in force in Western Australia.

UNDERTAKINGS BY THE STATE

5. During the term of this Agreement —
 - (a) the State must not expropriate or confiscate from the Joint Venturers timber standing or felled produced by or on behalf of the Joint Venturers from land referred to in Recital B(a) and (b) or wood chips made from that timber;
 - (b) the State must not impose, nor permit or authorise any of its agencies or instrumentalities or any local or other authority of the State to impose discriminatory taxes rates or charges of any nature whatever on or in respect of the Timber Sharefarming Agreements or the land, leases, or licences referred to in Recital B(b), or the timber standing or felled produced under the Timber Sharefarming Agreements or from that land or wood chips made from that timber;
 - (c) the State must not discriminate against the Joint Venturers in processing the Joint Venturers' applications made in respect of their activities relating to the production of timber by or on behalf of the Joint Venturers under the

Timber Sharefarming Agreements or on the land referred to in Recital B(b), or made in respect of the processing of that timber into wood chips;

- (d) the State must not impose restrictions which prevent the export by the Joint Venturers of wood chips made from timber which has been produced under the Timber Sharefarming Agreements or from land referred to in Recital B(b);
- (e) subject to relevant safety considerations the State must not materially obstruct, nor permit or authorise any of its agencies or instrumentalities or any local or other authority of the State materially to obstruct, the Joint Venturers' timber production operations on land referred to in Recital B(a) and (b) or the transportation of the timber produced from those operations or processing for export or transportation of wood chips made from that timber;
- (f) on request by the Joint Venturers the State must make representations to the Commonwealth, or to the relevant Commonwealth constituted agency authority or instrumentality, for the grant to the Joint Venturers of any licence or consent under the laws of the Commonwealth necessary to enable or to permit the Joint Venturers to export wood chips made from timber which has been produced under the Timber Sharefarming Agreements or from land referred to in Recital B(b); and
- (g) the State must not cause the Executive Director to breach the AI Deed, the Timber Sharefarming Agreements, or the leases or the licences referred to in Recital B(b)(ii) and (iii).

VARIATION

- 6. (1) The parties may from time to time by agreement in writing add to substitute for cancel or vary all or any of the provisions of this Agreement for the purposes of more efficiently or satisfactorily implementing or facilitating any of the objects of this Agreement, but any agreement made pursuant to this subclause does not come into effect except in accordance with subclause (3).
- (2) The Minister must cause any agreement made pursuant to subclause (1) to be laid on the Table of each House of Parliament within twelve sitting days next following its execution.
- (3) Either House may, within twelve sitting days after the agreement has been laid before it, pass a resolution disallowing the agreement, but if after the last day on which the agreement might have been disallowed neither

House has passed such a resolution, then the agreement will have effect from and after that last day.

TERM OF AGREEMENT

7. This Agreement will expire at such time as the Joint Venturers cease to have any rights or obligations under any of the Timber Sharefarming Agreements or under any lease or licence referred to in Recital B(b)(ii) and (iii), or on 30 June 2030, whichever is earlier.

APPLICABLE LAW

8. This Agreement is to be interpreted according to the law for the time being in force in the State of Western Australia and the parties irrevocably submit to the exclusive jurisdiction of the courts of Western Australia and to courts hearing appeals from those courts.

EXECUTED by the parties.

SIGNED for and on behalf of the)
State of Western Australia by **THE**) **RICHARD COURT**
HONOURABLE RICHARD)
COURT M.L.A., Premier in the)
presence of:

COLIN BARNETT

Witness

MINISTER FOR RESOURCES DEVELOPMENT

Address

Occupation

THE COMMON SEAL of
NIPPON PAPER TREEFARM
AUSTRALIA PTY LTD
was affixed to this Agreement by
authority of the Directors in the
presence of:

)
)
) C.S.
)
)
)

KAZUHIRO SAKAI

KEIJI NISHIHARA

DIRECTOR

DIRECTOR/SECRETARY

MR KAZUHIRO SAKAI

MR KEIJI NISHIHARA

THE COMMON SEAL of
MITSUI PLANTATION
DEVELOPMENT (AUSTRALIA)
PTY LTD was affixed to this
Agreement by authority of the
Directors in the presence of:

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)
) C.S.
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)
)

KOICHI FUKUSHIMA

Y. OKAMOTO

DIRECTOR

DIRECTOR

MR KOICHI FUKUSHIMA

MR YOZO OKAMOTO

THE COMMON SEAL of MCA
AFFORESTATION PTY LTD
was affixed to this Agreement by
authority of the Directors in the
presence of:

)
)
) C.S.
)
)
)

T. KOIDE

K. ARAKAWA

DIRECTOR

DIRECTOR

MR. TOMONORI KOIDE

MR KENICHIRO ARAKAWA